

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
(Flint)**

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In Re:

Chapter 11

BIG COOP'S TRUCKING, LLC,

Case No. 19-30180

Hon. Marci B. McIvor

Debtor.

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**OBJECTION OF HITACHI CAPITAL AMERICA CORP.
TO PROPOSED CHAPTER 11 PLAN OF BIG COOP'S TRUCKING, LLC**

Hitachi Capital America Corp. ("Hitachi"), by its undersigned attorneys, hereby files this objection to the proposed Chapter 11 Plan filed by the Debtor Big Coop's Trucking, LLC (the "Debtor") and in support thereof Hitachi respectfully states as follows:

I. BACKGROUND FACTS

1. On January 25, 2019 (the "Petition Date"), the Debtor filed a Voluntary Petition under Chapter 11 of Title 11, of the United States Code (the "Bankruptcy Code"), and an Order for Relief was entered on that date.

2. Prior to the Petition Date, the Debtor entered into two Commercial Motor Vehicle Lease Agreements¹ (collectively the "Leases") with Hitachi.

3. The first lease ("Lease #1") was for a 2019 Mack Anthem 64T Truck, VIN 1M1AN4GY5KM003125 and required the Debtor was to make monthly payments of \$2,573.21.

¹ Both of the Leases were the subject of a Motion to Compel Assumption or Rejection of the Lease filed by Hitachi on April 23, 2019 and which was resolved by Order dated May 30, 2019. Accordingly, the factual details of the leases will not be repeated herein except where necessary. (See, ECF Docs 48 & 60)

4. The second lease (“Lease #2”) was for a 2019 Mack Anthem 64T Truck, VIN 1M1AN4GY7KM003126 and required the Debtor was to make monthly payments of \$2,568.83.

5. Each of the Leases are currently past due for August 1, 2019. Inclusive of the outstanding payments which came due November 1, 2019 there is owed under Lease #1 the sum of \$10,292.84; and owed under Lease #2 the sum of \$10,275.32.

6. The Leases are “true leases” and qualify as executory contracts.

7. On or about August 6, 2019, the Debtor filed its Combined Plan and Disclosure Statement (See, ECF Doc #81).

8. Although the Plan identifies the nature of Hitachi’s claim as arising from two (2) “leases”, it improperly categorizes Hitachi’s claim as a “secured” claim and more importantly fails to provide for a cure of the arrears.

9. The Bankruptcy Code provides that a debtor cannot assume a lease until the delinquencies are cured or the Debtor provides adequate assurance that the defaults will be promptly cured. See 11 U.S.C. §365(b)(1)(A). Absent the foregoing, the executory contracts may not be assumed.

10. As stated above Hitachi’s records reflect that, at this time, Hitachi is owed not less than \$10,292.84 under Lease #1; and not less than \$10,275.32 under Lease #2 for a total of \$20,568.16. Hitachi reserves its right to assert additional amounts owed once the Debtor provides more certainty on the contracts at issue.

II. CONCLUSION

11. For the reasons discussed above, Hitachi respectfully requests that the Court deny confirmation of the Debtor's Plan to the extent the Debtor attempts to assume the Hitachi leases without first curing the arrearages or providing adequate assurance that the defaults will be promptly cured.

Dated: November 18, 2019

SIMON PLC
Attorneys & Counselors

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